

Service Date: December 8, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
SOUTHERN MONTANA TELEPHONE)	DOCKET NO. D97.11.225
COMPANY for an Increase to)	
Intrastate Carrier Access Charges.)	ORDER NO. 6047b

FINAL ORDER

INTRODUCTION

1. On November 25, 1997, Southern Montana Telephone Company (SMTc) notified the Montana Public Service Commission (Commission) that it intended to increase carrier access rates under Title 69, Chapter 3, Part 9, MCA, entitled "Rate Regulation of Small Telecommunications Providers." As required by § 69-3-903, MCA, SMTc mailed a notice of the proposed rate increase to each affected interexchange carrier and notified the Montana Consumer Counsel (MCC). Part 9 requires small telecommunications providers to notify the Commission, the MCC, and those affected by a proposed access rate increase 60 days in advance of the effective date. If no petitions for Commission review are filed before the scheduled date for the increase to go into effect, the increase is automatically effective as of the 60th day following notice to interexchange carriers.

2. U S WEST filed a Petition for Review and Establishment of rates on January 26, 1998, asserting that it is entitled to a Commission Order requiring SMTc to "refile its request for 79.3% increase in intrastate access charges according to the Commission's minimum filing standards, ARM 38.5.2801, et seq." U S WEST requested that the Commission establish a

contested case procedure for hearing the merits of SMTC's rate increase and to postpone consideration of the increase, including any consideration of interim rate relief, until SMTC makes a filing which complies with such rules.

3. On January 29, 1998, SMTC requested interim approval of an increase in access rates from \$.081 per minute to \$.1452 per minute. On January 30, 1998, SMTC filed a Motion for Waiver of ARM 38.5.503, 38.5.505(1) and 38.5.506(2). The Commission granted SMTC's request for an interim increase and SMTC's Motion for Waiver on February 2, 1998, with the exception of ARM 38.5.503. A subsequent SMTC request for waiver of ARM 38.5.2803 was granted on April 21, 1998. ARM 38.5.2803 would have required SMTC to file cost studies for 1997.

4. On March 19, 1998, SMTC filed a Motion to Amend Application. SMTC's motion requested that it be permitted to amend its original application to provide for a change in the amount of the increase from a total of \$0.1452 per minute for switched access rate elements to a total of \$0.1469 per minute. SMTC's amendment did not request a corresponding increase in the interim rate. The Commission granted this motion on March 31, 1998.

5. The Commission's February 12, 1998, Procedural Order scheduled a hearing to commence on August 5, 1998. The hearing for this matter was vacated and rescheduled three times. The last hearing date scheduled was October 22, 1998. On October 7, 1998, SMTC and U S WEST filed a stipulation for settlement and a joint motion requesting that the October 22, 1998, hearing be cancelled pending the approval of their stipulation for settlement. The parties' stipulation agrees to a composite intrastate carrier switched access rate of \$0.14 per minute, with no true-up with respect to the higher interim rate. The Commission vacated the hearing on

October 13, 1998, and issued a notice of the stipulation. The only other party in this Docket, the MCC, has not objected to the proposed stipulation.

DISCUSSION

6. According to Part 9, if the Commission receives no petitions for Commission review of proposed rate increases for access services, the rate increase goes into effect on the 60th day following notice to interexchange carriers. However, if any interexchange carrier files a petition for Commission review and determination of rates, the Commission must notify the small telecommunications provider of this fact and that the proposed rate increase will not take affect as noticed. Section 69-3-907(2), MCA. Section 907(2) further provides that the commission shall then review and determine the rates in that category pursuant to Chapter 3, which can include a contested case hearing under MAPA.

7. Thus, the Commission is never vested with jurisdiction over the changes in rates unless it receives a petition to review the proposed rates within the statutory time period. In this case, U S WEST's filing of a petition for review triggered the Commission's jurisdiction over SMTC's carrier access rate increases.

8. SMTC's application stated that it must increase its access rates because it can no longer cover its high costs through the TECOM pool. In order to cover expenses in a manner that is "revenue neutral" to SMTC, it must increase carrier access charges. U S WEST has negotiated lower access rates from other TECOM members. This is essentially a mere "rebalancing" of access rates so that higher rates are charged by companies that have higher costs, rather than averaging all companies in the pool and charging a uniform rate for all areas.

9. The special provisions for rate regulation of small companies in Part 9 were intended to ease the burdens of small companies wishing to increase their rates. Part 9 includes

provisions for Commission jurisdiction to review certain rate increases only if petitions that comply with § 69-3-907 are filed within 60 days following notice of an increase. Even when such a petition is filed, as in this Docket, the Commission should require no more than is necessary under the circumstances of each case.

10. The Commission waived its minimum filing requirement rules in this Docket and required SMTC to file sufficient material to support its application. SMTC subsequently filed testimony, as did U S WEST, and the parties conducted discovery. These materials are not part of the evidentiary record in this Docket. For purposes of reviewing the stipulation between SMTC and U S WEST, it is important that the Commission keep in mind that Part 9 eases the requirements for small telecommunications providers. In particular, the Commission would have had no jurisdiction in this matter but for U S WEST's petition.

11. The MCC intervened in this Docket, but has not actively participated and has not commented on the U S WEST/SMTC Stipulation. If the lone objector—U S WEST in this case—is satisfied with the results of its negotiations with SMTC, the Commission should accept the parties' resolution of issues unless the Stipulation raises other concerns. The Commission is satisfied that there are no other concerns related to this Stipulation.

Stipulation

12. The parties' stipulation is attached to this order. The Stipulation states that it settles all issues between the parties. The contents of the Stipulation are briefly summarized as follows.

13. If approved, the stipulation requires SMTC to file on or before October 23, 1998 a plan to implement intraLATA equal access. SMTC requested and was granted a brief extension

of time to file its implementation plan. SMTC subsequently filed its plan for intraLATA equal access implementation on October 26, 1998.

14. The Stipulation provides that U S WEST will cease to act as SMTC's designated toll carrier on May 1, 1999, or sooner if SMTC so chooses.

15. Other aspects of the stipulation involve the carrier access charges that SMTC may assess. SMTC will continue to charge the interim approved rates for carrier access until its intraLATA equal access plan is implemented. Effective the 16th day of the month following implementation of intraLATA dialing parity, SMTC will begin charging a \$0.0004 end office rate, a \$0.0774 local transport rate and a \$0.0622 carrier common line charge rate.

16. Other provisions of the stipulation condition how SMTC charges for access on the placement of various physical plant. SMTC will bill both originating and terminating access on actual measured usage minutes. Terminating minutes shall be billed on a one-to-one basis with originating minutes until U S WEST installs a dedicated trunk facility between the Wisdom central office and U S WEST. After this dedicated trunk facility is in place, terminating minutes of use must be measured. If switching capability is not installed, U S WEST's Toll Usage Termination Report shall be used to measure terminating access.

Commission Decision

17. The Commission concludes that the U S WEST and SMT Stipulation should be approved. Although an increase in carrier access rates may appear to be a move in the wrong direction, there are overriding policy concerns which warrant the increases. SMTC is a high cost company which, until 1998, received access revenues from a pooling arrangement. Nothing has changed to decrease the total access revenues that SMTC requires.

18. Montana has no state universal service fund at present which could provide a solution to the dilemma SMTC found itself in when the TECOM pool could no longer meet its needs for carrier access revenues. U S WEST raised concerns in this Docket about SMTC's corporate operations expenses. These expenses will be examined in any future revenue requirement case for SMTC. It will also be appropriate to examine these expenses if SMTC applies for assistance from a state universal service program.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. SMTC is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. SMTC is a "small telecommunications provider" as that term is defined in § 69-3-901(5), MCA, and as such, is subject to the reduced rate regulatory treatment set forth in Title 69, Chapter 3, Part 9 of the Montana Code Annotated.

3. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

4. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that the Stipulation presented to the Commission by U S WEST and Southern Montana Telephone Company is approved as discussed herein.

DONE AND DATED at Helena, Montana, this 3rd day of December, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.